IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1457 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SULOCHNABEN W/O HASMUKHBHAI MOHANBHAI VALA (MOCHI) & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR ZUBIN F BHARDA for petitioners.
MR RC KODEKAR ADDL.PUBLIC PROSECUTOR for Respondent No.1,
MR HS MULIA for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/10/2007

ORAL JUDGMENT

1. Present petition has been filed by the petitioners – original accused under Article 226 of the Constitution of India read with sec.482 of the Code of Criminal Procedure

for an appropriate order to quash and set aside the criminal complaint / First Information Report being I-C.R. No.170 of 2004 registered with Anjar Police Station and subsequent proceedings arising out of the same.

2. The aforesaid criminal complaint / FIR being I-C.R. No.170 of 2004 is filed by the respondent No.2 – original complainant named Mukeshbhai who happens to be the brother of deceased Hasmukhbhai Mohanbhai, against the petitioners – original accused for the offences punishable under sections 306 read with sec.114 of Indian Penal Code inter-alia alleging that the petitioner No.1 – wife of the deceased Hasmukhbhai Mohanbhai was serving as as nurse and was having illicit relation with the petitioner No.2 herein. It is further alleged in the complaint that when the deceased Hasmukhbhai was raising voice, he was ill-treated by the petitioners and even the petitioner No.1 was not preparing food and tiffin. It is also further alleged by the complainant in the complaint that the deceased had time and again made complaint to him with regard to ill-treatment and the harassment by the petitioners. It is further alleged in the complaint that even the petitioner No.1 had prepared one Will dtd.7/5/2004 wherein the property has not been

given to the deceased husband – Hasmukhbhai and son Rahul and it was stated in the Will that the petitioner Nos.2 and 3 would be administrators of the property. It is further alleged in the complaint that as the petitioners were constantly torturing the deceased, the said Hasmukhbhai committed suicide and therefore, the impugned complaint came to be filed. That after the investigation was over, chargesheet came to be filed by the investigating officer against the petitioners for the offences punishable under sec.306 read with sec.114 of Indian Penal Code and the case was committed to the learned Sessions Court and registered as Sessions Case No.32 of 2005. It appears that one complaint also came to be filed by the petitioner No.1 against her husband – deceased Hasmukhbhai for the offence punishable under sec.307 of Indian Penal Code (copy of the said complaint is not produced on record and therefore, this Court is not in a position to appreciate the allegations made in the said complaint). That thereafter the petitioners filed an application at Ex.5 before the court below under sec.227 of the Code of Criminal Procedure, for discharging them from the offences alleged against them. It appears that number of authorities were cited on behalf of the

petitioners in support of their submissions that no case is made out against the petitioners for the offences punishable under section 306 of Indian Penal Code. The application was opposed by the learned Public Prosecutor submitting that prima facie case is made out against the petitioners and at the time of framing of the charge, entire evidence is not required to be appreciated as if trial and at the stage of framing of the charge, the Magistrate is not required to consider whether the accused persons are likely to be convicted on the basis of the evidence collected or not. The learned Additional Sessions Judge by order dtd.14/8/2006 dismissed the said application Ex.5 filed by the petitioners under sec.227 of the Code of Criminal Procedure and ordered to frame charge against the petitioners as per Committal Order, by further observing that, considering the police papers, statements, panchnama etc. and the documents submitted by the investigating agency, there is sufficient grounds for proceeding further against the accused. Feeling aggrieved and dissatisfied with the same, the petitioners – original accused have preferred the present petition under Article 226 of the Constitution of India read with sec.482 of the Code of Criminal Procedure.

3. Mr.Zubin Bharda, learned advocate appearing for the petitioners has vehemently submitted that in the facts and circumstances of the case and considering the allegations made against the petitioners, it cannot be said that the petitioners have committed the offences punishable under sec.306 read with sec.114 of Indian Penal Code. He has relied upon the decision of the Hon'ble Supreme Court in the case of Sanju alias Sanjay Singh Sengar Vs. State of M.P., reported in AIR 2002 SC 1998 as well as in the case of Netai Dutta Vs. State of West Bengal, reported in the case of 2005 SCC (Cri.) 543, in support of his submission that ingredients of sec.306, 114 of Indian Penal Code are not made out and therefore, the impugned complaint / FIR requires to be set aside. He has also relied upon the decision of the learned Single Judge of this Court in the case of State of Gujarat Vs. Bharatbhai Balubhai Lad & others, reported in 2006(1) GLR 514 as well as in the case of S.G. Munia Vs. State of Gujarat & another, reported in 2002 (3) GLR 2507 in support of his prayer to quash and set aside the impugned complaint / FIR and proceedings arising out of the same.

4. He has also further submitted that the intention which is

to be gathered and even on considering the dying declaration, no case is made out against the petitioners for the offence punishable under secs.306 and 114 of Indian Penal Code and therefore, it is requested to allow the present petition by quashing and setting aside the impugned complaint / FIR. It is further submitted that prima facie no ingredients of abetment is made out causing abetment under sec.107 of the Indian Penal Code and therefore, the complaint is nothing but sheer abuse of process of law which requires to be quashed and set aside.

5. The petition is opposed by Mr.HS Mulia, learned advocate appearing on behalf of the respondent No.2 - original complainant and Mr.R.C.Kodekar, learned advocate appearing on behalf of the respondent No.1 – State, submitting that on bare reading of the impugned complaint / FIR, prima facie case is made out against the petitioners for the offences punishable under sec.306 read withs sec.114 of Indian Penal Code and therefore, the learned Additional Sessions Judge has rightly framed the charge against the petitioners as per the Committal Order. It is submitted that as held by the Hon'ble Supreme Court in the case of State of Orissa and another

Vs. Saroj Kumar Sahoo, reported in (2005) 13 SCC 540, at the time of framing of the charge what is required to be considered is whether prima facie case is made out against the accused for further trial or not and at that stage, evidences is not to be appreciated. It is also not required to be considered at that stage whether the accused persons are likely to be convicted on the basis of the said evidence or not. He has also submitted that as held by the Hon'ble Supreme Court in the case Kanti Bhadra Shah and State of West Bengal, reported in AIR 2000 SC 522 even while framing the charge even reasons for the same need not be recorded by the trial court. It is submitted that in the present case on considering the evidence on record, the trial court has formed an opinion that there is a prima facie case against the petitioners – accused which requires further trial and therefore, the learned trial court has rightly rejected the application of the petitioners for discharge. He has also further submitted that as held by the Hon'ble Supreme Court in the case of State of State of Orissa Vs. Bansidhar Singh, reported in AIR 1996 SC 938 & State of Haryana Vs. Surinder Kumar, 2000 (10) SCC 337 quashing of proceedings by High Court before the veracity of the

dying declaration is tested at the trial is not permissible. Submitting accordingly, it is requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the parties.

7. At the outset, it is required to be noted that in the present petition respective petitioners have prayed for an appropriate order to quash and set aside the complaint / FIR being I-C.R. No.170 of 2004 only and the petitioners have not prayed to quash and set aside the order passed below Ex.5 by the learned Additional Sessions Judge rejecting the application submitted by the petitioners for discharge under sec.227 of the Code of Criminal Procedure. In the present petition, the petitioners have also not prayed to quash and set aside the order passed by the learned Additional Sessions Judge by which the learned Additional Sessions Judge has directed to frame charge against the petitioners. Be that as it may. This Court has also considered the case on merits and has considered the submissions made on behalf of the parties as well as the submissions made on behalf of the petitioners to discharge the petitioners from the offences alleged against them. This court has also considered the

impugned complaint / FIR and averments and allegations in the FIR as as well relevant evidence / statements which are part of the chargesheet.

8. The learned Additional Sessions Judge, after considering the reinvestigation papers of the case like statements, panchnama, dying declaration and the documents submitted by the investigating agency, has formed an opinion that there is sufficient ground for proceeding against the petitioners - accused and therefore, ordered to frame charge against the petitioners as per the committal order. As held by the Hon'ble Supreme Court in the case of Kanti Bhadra Shah (Supra) if the trial court decides to frame the charge, there is no legal requirement that he should pass an order giving reasons as to why he opts to do so. Framing of charge itself prima facie shows that the trial judge has formed an opinion upon the strength of the record, other documents and after hearing both the sides, that there is a ground for presuming that the accused has committed offence. It is also further observed by the Hon'ble Supreme Court in the said decision that sec.246 requires a Magistrate to record his reasons for discharging the accused, but there is no such requirement if he forms an opinion that there

is ground for presuming that the accused had committed offence which he is competent to try. In such a situation, he is only required to frame a charge in writing against the accused. In the case of State of Orissa and another Vs. Saroj Kumar Sahoo, reported in (2005) 13 SCC 540, the Hon'ble Supreme Court has also held that at the stage where charge is framed, Court has to be satisfied prima facie only about the existence of sufficient ground for proceeding against the accused and for that limited purpose, it can evaluate material and documents on record, but it cannot appreciate the evidence. As held by the Hon'ble Supreme Court, at the time of framing of the charge, the trial court is not required to appreciate evidence and consider whether on the basis of the evidence collected, the accused are likely to be convicted or not. The trial court has to be considered prima facie case at the time of framing of the charge putting the accused to trial and nothing further. Considering the aforesaid decision of the Hon'ble Supreme Court and the observations of the trial court in rejecting the application under sec.227 of the Code of Criminal Procedure, it cannot be said that the learned trial court has committed any error in dismissing the application for discharge and

framing the charge against the accused persons as per the Committal Order.

9. Now, so far as the decision relied upon by the learned advocate appearing on behalf of the petitioners in support of his submission that considering the dying declaration and even the averments in the FIR, no case is made out against the petitioners for the offence punishable under sec.306 read with sec.107 of Indian Penal Code and therefore the impugned FIR is required to be quashed and set aside, is concerned, in the facts and circumstances of the case, there is a prima facie case against the petitioners and it cannot be said that on bare reading of the impugned FIR no case is made out against the petitioners for the offences punishable under sec.306 read with sec.107 of Indian Penal Code. Whether the petitioners are likely to be convicted or not, is required to be considered at the time of trial on appreciation of evidence including dying declaration. Even considering the dying declaration also it appears that the said dying declaration is required to be considered and/or appreciated along with other evidences. This court is not further making any observation on merits as the same may affect the either party at the time of trial. However,

suffice it to say that there is a prima facie case against the petitioner for further trial and therefore, the impugned FIR is not required to be quashed and set aside in exercise of the powers under sec.482 of the Code of Criminal Procedure.

10. For the reasons stated above, the petition fails and the same requires dismissal and is accordingly dismissed. Rule is discharged. Ad-interim relief granted earlier is vacated forthwith.

[M.R. SHAH,J.]

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